

REMARKS

Applicants submit this reply in response to the final Office Action dated October 12, 2006. Claims 1-36 are currently pending, of which claims 15 and 29 are independent. Applicants have amended claims 15 and 29. Support for these amendments may be found, *inter alia*, in FIGS. 2A-B of the specification.

In the final Office Action, the Examiner rejected claims 15-20 and 29-32 under 35 U.S.C. § 102(e) as being clearly anticipated by U.S. Patent No. 6,198,860 to Johnson et al. ("Johnson"). The Examiner rejected claims 26, 27, 35, and 36 under 35 U.S.C. § 103(a) as being unpatentable over Johnson. The Examiner objected to claims 21-25 and 28 as being dependent upon a rejected base claim, but indicated that these claims would be allowable if rewritten in independent form.

In response to the non-final Office Action mailed June 30, 2006, Applicants noted that Johnson does not teach or suggest a photonic crystal having a regular periodicity, as claimed. See Applicants' response dated August 23, 2006, p. 8. However, in the final Office Action, the Examiner maintained the pending rejections over Johnson based on the following reasoning:

Applicant argues Johnson et al does not disclose a photonic crystal having a regular periodicity. However, the Examiner disagrees... In Johnson et al, the cross section region only has one defect waveguide and therefore the one defect waveguide has no periodicity, which in turn means a regular periodicity of zero.

Final Office Action, p. 7 (emphasis added).<sup>1</sup>

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

In this response, Applicants have amended independent claims 15 and 29 to recite, among other things, "a regular non-zero periodicity" (emphasis added). Because the Examiner acknowledges that Johnson teaches "a regular periodicity of zero," Johnson cannot also teach or suggest "a regular non-zero periodicity," as presently claimed. For at least this reason, Applicants respectfully submit that Johnson cannot anticipate or render obvious Applicants' amended independent claims 15 and 29.

Claims 16-28 and 30-36 depend on allowable independent claims 15 and 29 and are therefore allowable for at least the same reasons.

### Conclusion

The preceding remarks are based only on the arguments in the Office Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Office Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding remarks in favor of patentability is advanced without prejudice to other bases of patentability.

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-36 in condition for allowance. Applicants submit that the proposed amendments of claims 15 and 29 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Furthermore, Applicants respectfully point out that the final action by the Examiner presented some new arguments as to the application of the art against

Applicant's invention. It is respectfully submitted that the entering of the Amendment would allow the Applicants to reply to the final rejections and place the application in condition for allowance.

Finally, Applicants submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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